



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	Enrolled	Bill No:	SB 1881
Tax:	Sales and Use Tax Special Taxes and Fees	Author:	Senate Revenue and Taxation Committee
Related Bills:	SB 1882 (Senate Revenue and Taxation Committee)		

BILL SUMMARY

This bill contains **Board of Equalization-sponsored provisions** for the sales and use tax and the special taxes and fees programs, which would do the following:

- Amend Section 6480.1 to include the new Sections 6051.5 and 7203.1 in the computation of the sales tax prepayment on fuels.
- Renumber Section 6480.3 of the Revenue and Taxation Code as Section 6480.9 due to duplicate section numbers within the Revenue and Taxation Code.
- Amend Section 43152.14 of the Revenue and Taxation Code to delete the requirement to file a return for the Childhood Lead Poisoning Prevention Fee.
- Amend Sections 43201 and 55061 of the Revenue and Taxation Code to make it clear that when the Board collects a tax or fee assessed by another state agency, that it is appropriate for the Board to issue a notice of determination as the billing mechanism.
- Amend Sections 43350, 45351, 46301, 50120.1, and 55101 of the Revenue and Taxation Code to delete obsolete section references.
- Amend Section 46156 of the Oil Spill Response, Prevention, and Administration Fee Law to authorize the Board to grant relief of the penalty for failure to file an information report for the Oil Spill Response Fee.

In addition to the Board-sponsored provisions, this bill also contains provisions **sponsored by Board Member John Chiang** that would allow for the tax payment extensions due to a delayed budget to be effective until the last day of the month following the month in which the budget is adopted (§ 6459) and repeal provisions that would extend the due date for reporting and remitting use tax until April 15th of each year so that taxpayers reporting use tax due to prompts on the income tax return will be deemed to have filed timely (§ 6451.5).

ANALYSIS**Extended due date for use tax**
*Revenue and Taxation Code Section 6451.5***Current Law**

On June 25, 2003, the Board voted to adopt a joint effort between the Board and the Franchise Tax Board (FTB) to include a check-box line on the personal income tax return asking if the taxpayer has made any purchases from outside this state without payment of tax. Taxpayers answering "yes" would be directed to file a separate use tax return. Since any person who reports use tax from the previous calendar year to the Board in April based on instructions on the income tax form would have been subject to interest and penalties since use tax would normally be due and payable to the Board on the last day of the month following the quarterly period in which the liability arose, the Board sponsored Senate Bill 1060 (Ch. 605, Stats. 2003) to add Section 6451.5 which allows an extended period of time for taxpayers to file use tax liabilities based on instructions on the income tax return.

However, similar provisions were also contained in Senate Bill 1009 (Ch. 718, Stats. 2003). These provisions authorized a person to report qualified use tax on their California income tax return for purchases made on or after January 1, 2003, and through December 31, 2009. SB 1009 also contained provisions that use tax reported on the income tax return is deemed to be filed timely provided the income tax return is filed timely. The FTB would transfer the use tax revenues received to the Board.

Due to the successful passage of SB 1009, the joint effort adopted between the Board and the FTB to include a check-box line on the personal income tax return was deemed redundant and was not implemented. Additionally, SB 1060 contained double-joining language that provided if SB 1009 passed, Section 6451.5 would not become operative. However, due to amendments to SB 1060 on September 2, 2003, the reference to the section of the bill that was not to become operative if SB 1009 were to pass was incorrectly listed as Section 6459 rather than 6451.5. As a result, Section 6451.5 became law with the successful passage of SB 1060, even though SB 1009 also successfully passed and became law.

Proposed Law

This bill would repeal Section 6451.5.

Comments

Since the Board is not going forward with the joint effort with the FTB to include a check-box line on the personal income tax return and SB 1009 already added provisions regarding the extended due date for use tax reported on the income tax return, Section 6451.5 is not needed.

Tax payment extension due to delayed state budget
Revenue and Taxation Code Section 6459

Current Law

Current law requires taxpayers to file sales and use tax returns on or before the last day of the month following the end of the reporting period. Failure to file the return timely and pay the taxes due would result in the imposition of penalties and interest.

Due to the delay in approving the state budget in 1992, the Board-sponsored Assembly Bill 101 (Stats. 1993, Ch. 324) to amend Section 6459 of the Revenue and Taxation Code to allow the Board to extend the time period in which a taxpayer must file a sales and use tax return when the taxpayer is an unpaid creditor of the state and a state budget has not been adopted in a timely manner. As amended, Section 6459 provides that the return is due at the end of the same month in which the budget is adopted or one month from the due date of the return or payment, whichever comes later. Any taxpayer granted an extension is still required to pay interest on the amount of tax due to the state that exceeds the amount due from the state for the period from when the tax would have been due until the date paid to the state. Prior to passage of this bill, many taxpayers were unfairly burdened by the fact that they owed the state an amount of tax, while at the same time they were owed money by the state that they were unable to collect due to delays in enacting the state budget.

Proposed Law

This bill would amend Section 6459 to provide that the return is due at the end of the *following* month in which the budget is adopted or one month from the due date of the return or payment, whichever comes later, provided the taxpayer is a creditor of the state.

Comments

Current law may not grant the taxpayer the necessary relief that the statute was intended to provide. The following scenarios illustrate the reason for the suggested change.

Scenario #1: Budget adopted August 30th

Period	Due Date	Last Day for Extension	Days from Budget to Extension Deadline
July Prepayment	August 24	September 24	24
July Return	August 31	September 30	30

Scenario #2: Budget adopted September 25th

Period	Due Date	Last Day for Extension	Days from Budget to Extension Deadline
July Prepayment	August 24	September 30	5
July Return	August 31	September 30	5

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

In Scenario #1, it is likely that the state will have paid its debts by the time the extension expires and the taxpayer is required to remit taxes due to the state, thus not imposing any financial hardship on the taxpayer. In Scenario #2, it is highly unlikely that the state will pay its debts to the taxpayer before the extension expires. This situation essentially defeats the purpose of the extension which is to allow the taxpayer to postpone payment of their tax liability until they are paid for overdue debts of the state.

The provisions in this bill would address the situation illustrated in Scenario #2. Under the provisions of this bill, the taxpayer in Scenario #2 should receive payment from the state prior to the due date of their tax liability since the extension would be good until October 31, rather than September 30.

These same provisions were contained in Board-sponsored Senate Bill 1060 (Ch. 605, Stats. 2003). However, due to a drafting error in amendments taken on September 2, 2003, this provision was incorrectly double joined with Senate Bill 1009. Due to this error and the successful passage of SB 1009, the amendments to Section 6459 did not become operative (Section 6451.5 should not have become operative).

Fuel prepayment calculation
Revenue and Taxation Code Section 6480.1

Current Law

Under existing law, Section 6480.1 of the Sales and Use Tax Law requires suppliers and wholesalers of motor vehicle fuel (gasoline), aircraft jet fuel, and diesel fuel to collect a prepayment of the sales tax when they remove the fuel at the terminal rack, enter the fuel into California, or sell the fuels at any point after removal from the terminal rack. Section 6480.1 requires the Board to establish the sales tax prepayment rates on these fuels. The rate of prepayment is based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price as determined by industry publications. The Board is required, by November 1, of each year to establish the new prepayment rates for these fuels. The new rates take effect each April 1 and remains in effect through each March 31.

Due to the successful passage of Proposition 57 in the March 2004 primary election, operative July 1, 2004, the state sales and use tax rate will increase by 0.25 percent and the local sales and use tax rate will decrease by 0.25 percent. Proposition 57 added Section 6051.5 of the Revenue and Taxation Code, to impose the new 0.25 percent state sales and use tax. The revenues generated from this tax are to be deposited into the Fiscal Recovery Fund and dedicated to the repayment of the deficit bonds. Proposition 57 also added Section 7203.1 of the Revenue and Taxation Code, to provide that the tax rate percent imposed under Section 7202 is temporarily suspended, and the new tax rate to be applied instead is 1 percent for a county and 0.75 percent for a city (a 0.25 percent decrease).

Proposed Law

This proposal would amend Section 6480.1 to include the new Sections 6051.5 and 7203.1 in the computation of the sales tax prepayment on fuels.

Comments

The purpose of this bill is to make a technical amendment to Section 6480.1 to base the prepaid sales tax on the combined state and local sales tax rates. The references to Sections 6051.5 and 7203.1 would bring the base at which the prepaid sales tax is computed in line with the combined state and local tax rate.

Renumber duplicate Section 6480.3 as 6480.9
Revenue and Taxation Code Section 6480.9

Current Law

Section 6480.3 of the Revenue and Taxation Code was added in 1986 to address prepayment of sales tax on sales of motor vehicle fuel. In 2001, Section 6480.3 was amended by Assembly Bill 309 (Ch. 429, Stats. 2001) to include new terminology. However, due to an oversight, passage of Senate Bill 1901 (Ch. 446, Stats. 2002) added an additional Section 6480.3 authorizing a qualified person to issue an exemption certificate to a diesel fuel supplier with respect to that portion of diesel fuel that the qualified person reasonably expects to sell to farmers and food processors that qualify for the state sales and use tax exemption, under specified conditions. Both statutes in the code are currently listed as 6480.3.

Proposed Law

This bill would amend Section 6408.3, as added by Chapter 446 of the Statutes of 2002, to renumber the Section as 6480.9.

Comments

The purpose of this bill is make a technical correction to the Revenue and Taxation Code due to duplicate Section numbers.

Childhood Lead Poisoning Prevention Fee return clarification
Revenue and Taxation Code Section 43152.14

Current Law

Under the existing Hazardous Substances Tax Law, Section 43152.14 provides that the Childhood Lead Poisoning Prevention Fee is due and payable on April 1 of each year and that a feepayer shall file a return in the form as prescribed by the Board. The Hazardous Substance Tax Law contains the administrative and collection provisions for the Childhood Lead Poisoning Prevention Fee, which is imposed pursuant to Section 105310 of the Health and Safety Code. The fee is administered and collected by the Board in cooperation with the Department of Health Services (DHS).

Background

In 2002, Assembly Bill 1936 (Ch. 450) amended Section 43152.14 to authorize a feepayer to file an electronic return, and for returns to be authenticated as prescribed by the Board. However, the DHS subsequently adopted regulations that changed the method of collecting the Childhood Lead Poisoning Prevention Fee from a return, where a feepayer self-reports the amount of the fee due, to a bill of the fee amount.

Proposed Law

This bill would amend Section 43152.14 of the Revenue and Taxation Code to delete the requirement to file a return for the Childhood Lead Poisoning Prevention Fee.

Comments

This provision would delete the requirement for filing a return and the methods for authenticating such returns for purposes of the Childhood Lead Poisoning Prevention Fee in order to conform to DHS regulations.

Delete obsolete references

Revenue and Taxation Code Sections 43201 and 55061

Current Law

Existing Hazardous Substances Tax Law (Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code) is utilized by the Board to administer and collect many different taxes or fees, including the Childhood Lead Poisoning Prevention Fee assessed by the DHS, and various “activity fees” (including permit application fees, permit modification fees and site remediation oversight fees) assessed by the Department of Toxic Substances Control. The terms “fee” and “tax” are used interchangeably in the collection provisions of the Hazardous Substances Tax Law.

In addition, under the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) the Board administers and collects the California Tire Fee, Ballast Water Management Fee, and the Natural Gas Surcharge. Effective January 1, 2004, the Fee Collection Procedure Law may also be used to administer and collect the Covered Electronic Waste Recycling Fee, Water Rights Fee, and the manufacturer and importer administration fee imposed under the Cigarette and Tobacco Products Licensing Act of 2003.

Background

The Fee Collection Procedures Law contains “generic” administrative provisions for the administration and collection of fee programs to be administered by the Board. The Fee Collection Procedures Law was added to the Revenue and Taxation Code to allow bills establishing a new fee to be collected by the Board to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as provides the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

Currently, the Hazardous Substances Tax Law and the Fee Collection Procedures Law specify in Sections 43201 and 55061, respectively, that a determination may be made if the Board is dissatisfied with the return filed or the amount of the fee paid to the state by any feepayer, or if no return has been filed or no payment of the fee has been made. This language assumes that the tax or fee will be remitted and reported on a return, and does not expressly allow the Board to issue a notice of determination when the amount to be collected is based on an assessment by another state agency, on a calculation by the Board, or on a fee amount fixed by statute for which no return is required to be filed.

Proposed Law

This bill would amend Sections 43201 and 55061 of the Revenue and Taxation Code to make it clear that when the Board collects a tax or fee assessed by another state agency, that it is appropriate for the Board to issue a notice of determination as the billing mechanism.

Comments

These provisions would clarify that, under circumstances when the Board is authorized to collect a tax or fee that is either assessed by another state agency or calculated by the Board and collected for another state agency, or fixed by statute and collected by the Board without the requirement to file a return, it is appropriate for the Board to issue a notice of determination or other similar billing document for that purpose. This provision would also correct typographical errors.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

Delete obsolete sections

Revenue and Taxation Code Sections 43350, 45351, 46301, 50120.1, and 55101

Current Law

Under existing law, Sections 43350, 45351, 46301, and 55101 of the Revenue and Taxation Code provide that if the amount of tax, interest, and penalty specified in a jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the taxpayer of notice of the determination, the determination becomes final, and the delinquency penalty and interest shall attach to the amount of tax specified. These jeopardy determination statutes in the Hazardous Substance Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fee law, Underground Storage Tank Maintenance Fee Law, and Fee Collections Procedures Law reference Sections 43156, 45154, 46155, 50112.1, and 55043, respectively, for purposes of imposing delinquency interest.

Background

In 2000, AB 2894 (Chapter 923) combined the delinquency penalty and interest provisions into one statute. As such, AB 2894 resulted in the repeal of Sections 43156, 45154, 46155, 50112.1, and 55043 and therefore made obsolete the references to those sections in Section 43350, 45351, 46301, and 55101.

Proposed Law

This bill would amend Sections 43350, 45351, 46301, 50120.1, and 55101 of the Revenue and Taxation Code to delete obsolete section references.

Comments

These provisions would simply delete the obsolete section references in order to avoid confusion for taxpayers. The Board would continue to impose the delinquency penalty and interest as provided in existing law.

Relief of Penalty
Revenue and Taxation Code Section 46156

Current Law

Under the existing Oil Spill Response, Prevention, and Administration Fee Law, Section 46154.1 of the Revenue and Taxation Code allows for a penalty of five hundred dollars (\$500) if the annual information return for the Oil Spill Response Fee is not filed on time.

Section 46156 of the Oil Spill Response, Prevention, and Administration Fee Law provides that if the Board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty as provided in specified sections.

Background

In 2000, when Section 46154.1 was added to the Oil Spill Response, Prevention, and Administration Fee Law, Section 46156 should have been amended to include a reference to Section 46154.1 among the penalties that may be relieved by the Board.

Proposed Law

This bill would amend Section 46156 of the Oil Spill Response, Prevention, and Administration Fee Law to authorize the Board to grant relief of the penalty for failure to file an information report for the Oil Spill Response Fee.

Comments

Consistent with other fees and taxes administered by the Board, this provision would allow the Board, under certain circumstances, to relieve the feepayer of the penalty for failure to make a timely information return when such failure is due to reasonable cause and circumstances beyond the persons control.

COST ESTIMATE

Any costs associated with these Board-sponsored provisions would be insignificant (under \$10,000).

REVENUE ESTIMATE

This bill would have no impact on state revenues.

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